

IN SENATE OF THE UNITED STATES.

FEBRUARY 24, 1846.

Submitted, and ordered to be printed.

Mr. PENNYBACKER made the following

REPORT :

*The Committee of Claims, to whom was referred the " memorial of Samuel Grice, asking indemnification for losses sustained by failure to fulfil a contract with the government, which he was prevented from doing by the act of an officer of the United States," have had the same under consideration, and report :*

It is alleged that the memorialist, in the year 1836, being under contract with the government to deliver a quantity of live oak timber at the port of Brooklyn, State of New York, chartered and despatched a vessel to Halifax river, East Florida, where said timber was then lying ; that on arriving in the river, application was made for a lighter, the property of the memorialist, to transport the timber to the vessel, which could not approach nearer on account of the shallowness of the water. An answer to the application was received from Major Kirby, then in command of a military station in the vicinity, stating that the lighter had been taken by him to carry provisions to a post twenty miles up the river, and that owing to the exigency of the public service she could not be delivered up ; that owing to this refusal, there being no other boat of the kind in the river, the vessel sailed, after a week's delay, without effecting the object of her voyage, and the timber had been permitted to remain until it became unfit for use, and was lost to the memorialist. It is in proof that the lighter belonged to the memorialist, and that Major Kirby did refuse to give her up when requested to do so, for the reason above stated ; also, that the vessel left the river in a short time, as one of the witnesses states within a week, without effecting the object of her voyage ; but the committee wish to be informed on the following points : There is no evidence as to the time during which the boat was detained in the service of Major Kirby, nor whether more than one application was made for her. The committee wish further to know whether the memorialist was paid, as was probably the case, for the use of the boat, and what sum was actually paid by him for the charter of the vessel ; also whether no other boat could have been procured to answer the purpose, and whether the timber could not have been towed to the vessel by means of a raft and the boats belonging to her. The committee recognise the right of the memorialist to indemnification so far as he was subjected to loss by the act of the officer of the government, however necessary under the circumstances of the case ; but there is no evidence in this case to

show that the timber was totally lost, or that the charter-party was rendered valueless by a detention which, so far as the testimony goes, did not exceed a few days. From the shortness of the distance to the post to which the supplies were sent, 20 miles, it may be reasonably inferred the service for which the boat was pressed was of limited duration, and consequently she would have been at the disposal of her owner and his agents in the course of a few days, had they been disposed to wait so long. It cannot be expected that the government will pay for the timber in question, unless it be shown that, in consequence of the act of its officers, it became necessary to leave the logs where they were during two entire seasons, and that due diligence was used by the memorialist, and those in his employ, to prevent the loss. Of the necessary consequence of the exposure of timber in water in warm latitudes, the committee are fully aware; but before they can sanction the indemnification asked for in this instance, they must be satisfied that the alleged loss was not caused by a want of proper effort on the part of those who demand it.

Without further and more satisfactory evidence on the points above named, the committee do not think the claim should be allowed. Therefore,

*Resolved,* That on the evidence in the case, the prayer of the memorialist should not be granted.

It is alleged that the memorialist, in the year 1836, being under contract with the government to deliver a quantity of live oak timber at the port of Brooklyn, State of New York, chartered and despatched a vessel to Halifax river, East Florida, where said timber was then lying; that on arriving in the river, application was made for a lighter, the property of the memorialist, to transport the timber to the vessel, which could not approach nearer on account of the shallowness of the water. An answer to the application was received from Major Kirby, then in command of a military station in the vicinity, stating that the lighter had been taken by him to carry provisions to a post twenty miles up the river, and that owing to the urgency of the public service she could not be delivered up; that owing to this refusal, there being no other port of the kind in the river, the vessel sailed after a week's delay, without effecting the object of her voyage, and the timber had been permitted to remain until it became unfit for use, and was lost to the memorialist. It is in proof that the lighter belonged to the memorialist, and that Major Kirby did refuse to give her up when requested to do so; for the reason above stated; also, that the vessel left the river in a short time, as one of the witnesses states within a week, without effecting the object of her voyage; but the committee wish to be informed on the following points: There is no evidence as to the time during which the boat was detained in the service of Major Kirby, nor whether more than one application was made for her. The committee wish further to know whether the memorialist was paid, as was probably the case, for the use of the boat, and what sum was actually paid by him for the charter of the vessel; also whether no other port could have been procured to answer the purpose, and whether the timber could not have been towed to the vessel by means of a raft and the boats belonging to her. The committee recognise the right of the memorialist to indemnification so far as he was subjected to loss by the act of the officer of the government, however necessary under the circumstances of the case; but there is no evidence in this case to